

Town Council Meeting January 25, 2016 Minutes

The meeting was called to order at 7:00 pm.

Roll Call

All councilors were present and answering roll call.

Pledge of Allegiance

Chair Goldberg led those present in the Pledge of Allegiance.

Item 1 Public Forum

Mike Doyle of Shady Lane said police officers are not present at Council retreats and he spoke about a retreat held at the police station. Police are only present during meetings that are televised. He demanded an apology from the Town Manager for defaming him.

Item 2 Consent Agenda

There were no orders proposed in the consent agenda.

Item 3 Report from Council Committees and liaisons regarding updates on assignments.

Councilor King said LMAC hosted a public forum last week about pets in parks. About 30 people attended. This is the first step in a process of evaluating current pet ordinances to see if any changes are called for. Forest improvement harvesting has begun in Blackstrap Community Forest; an informational forum was held recently. Questions about this project can be directed to Bob Shafto, the Town's open space ombudsman.

Councilor Hemphill said ecomaine is looking for nominations for their annual eco-excellence awards. More information is available on the ecomaine website. He thanked REAC and the vendors that participated in last weekend's Energy Fair.

Item 4 Report from the Appointments Committee and order relative to filling various vacancies on Boards and Committees.

Councilor McBrady read the list of appointments and reappointments.

Councilor Kitchel moved to approve the following re-appointments:

- Board Of Zoning Appeals: Stan Given
- Parks And Community Programs Advisory Committee: Daniel Smith

And to approve the following appointments:

- Route 1 North Ad-Hoc Committee: Arthur Batson, Jr., Laurence Leonard, Tim Marr, Chris Wasileski, Steve Woods

Councilor Hemphill seconded. Motion carried 7-0.

Item 5 Public Forum and Order to authorize the Town Manager to execute an agreement between the Town and the Maine Department of Transportation and issue a Call for Offers (Request for Proposals) regarding the redevelopment of the Maine Turnpike Falmouth Spur Ramp System where it intersects with Route 1 in exchange for the right to develop an approximately 11-acre surplus property located easterly of Route 1.

Mr. Poore said staff is ready to issue a Request for Proposals (RFP) tomorrow, pending public comment and Council approval tonight.

Councilor King asked what a developer needs to know about the constraints of the lot before they proceed.

Mr. Poore said they included some of what the town might like to see with the development of this lot, based on the development of, and recent investment in, the Route 1 area, but it is really a blank canvas for developers. There is no zoning on the property, so the Council will need to work with developers to develop a master plan or zoning for the property.

Councilor King asked what the points of influence are for the Town: permitting, public input, Council input, etc.

Mr. Poore said that is outlined in the RFP to some extent, but they are looking for the developers to present ideas to the town about the lot. There will be opportunities for them to negotiate with the developer.

Councilor Kitchel asked if the developer will be expected to develop the entire site, or just a portion of it. Mr. Poore said it could be either, but the guidance in the RFP is to maximize the potential use of the lot.

Councilor Kitchel asked what would happen if the property could be subdivided and ownership held by two different developers.

Mr. Poore said that possibility hasn't been explored at this point.

Mr. Holtwijk said that scenario is highly unlikely due to the up-front infrastructure cost. Developers will likely want to maximize their investment. That isn't to say that there wouldn't be any green space, but they have requested proposals that utilize the entire 11 acres.

Councilor Farber asked how close the property is to the creek system. This site is close to the open area on the Shaws lot, which drains to the creeks. She was concerned about runoff into Webes Creek and Mill Creek.

Mr. Poore said any natural resource in the area would be protected under natural resource protection standards. This property is in the creek watershed and the Council should be concerned with stormwater quality when it reviews plans for the site, similar to the way it has with other properties in the Route 1 area.

Councilor Farber felt the RFP was not very green space friendly. While they want to allow for a lot of creativity for developers, the Town's traditional outlook on greenspace should be reflected in the document before they get too far down the road.

Councilor King agreed; she asked if there was a way to provide background on the parcel and its context in the RFP.

Councilor Hemphill felt that environmental matters would be addressed as a matter of course in the process. Mr. Poore agreed. He said the one thing that isn't in here is about the Town's recent efforts in that watershed and the importance of that watershed. He said they can highlight that.

Councilor Farber said there was discussion during the charette on the Falmouth Shopping Center property about the potential for using the greenspace and including walking trails and such.

Mr. Holtwijk said he would adjust the language. There is some mention of green space and walking trails in the RFP currently. He could incorporate the 2010 memo from the Council as well.

Chair Goldberg didn't want to give the idea that there should be a lot of open space. This is in the growth area and will be a commercial development. He did want to protect the watershed.

Councilor Anderson would like to hear the developer's plans for stormwater management in regards to the watershed.

Councilor King said the goal was mixed use, which might include residential development. She wasn't sure what they meant by a commercial development.

Councilor Anderson didn't agree that it had to be mixed use; it is a blank slate. He thought the economics would mandate mostly commercial development.

Councilor Kitchel thought the Planning Board would scrutinize the stormwater runoff and the layout of the property.

Councilor Farber pointed out that there will need to be zoning changes for this property, since there is no current zoning on the lot.

A public comment period opened; there was no public comment.

Councilor Farber was concerned with the role of the public in this process, and how they can include public input so that they make the best decision. She also wanted to protect the Council's ability to negotiate on behalf of the Town in order to best protect the Town's interests. She felt this demands a different process than the one used for the elementary schools project. She proposed adding language to the RFP requesting a public presentation from the developer after the Council has reviewed the proposals and selected the top two or three proposals. This would not include any Council deliberation, but would include public comment. The Council could then take the public comment into consideration when making their decision.

Councilor King agreed and said the Route 1 North committee might be a player as well.

Chair Goldberg pointed out that if a developer chose to make changes to an existing lot along Route 1 they could do that without any public input until the Planning Board process. The only difference between this process and that one is that the Town is involved in the design.

Councilor Farber argued that people have an understanding of the impact of an existing lot and since the zoning would already exist people have a reasonable expectation as to what could be done there. This property is a blank slate. She would like the RFP to at least make mention of the potential for a public presentation, so developers are aware.

Councilor Kitchel said this is a private land transaction between the DOT and the developer; the Town doesn't own the land.

Mr. Poore said that is correct; the DOT is relying on the Town to select the developer.

Councilor Kitchel asked about how the design guidelines apply to this lot; Mr. Poore said the understanding is that the Council would work with the developer on some kind of master plan or design guidelines for the lot. It isn't subject to the Route 1 design guidelines or zoning, though the Council could chose to use those.

Councilor Kitchel felt the opportunity for public input will happen as part of the normal process; they don't need to put a special requirement on it.

Councilor Farber said her concern is an instance where they have two proposals of equal quality but very different vision. She thought they would want public input on that before they chose a developer.

Councilor Anderson felt there would be plenty of opportunity for public comment, and they can add more if they feel it necessary. He thought it was too early to define that now.

Councilor Farber felt it would be a good idea to add a sentence in the RFP that a public presentation from the developer might be requested, just to give them a heads up. Councilor Hemphill agreed.

Councilor Farber moved the order; Councilor King seconded. Motion carried 7-0.

Item 6 Presentation of Route 100 Preliminary Plan Recommendations by the Route 100 Committee.

Andrea Ferrante, chair of the Route 100 committee, introduced the members of the committee and thanked them for all their work.

Mr. Holtwijk discussed the work the committee has done since August 2015, including issuing an RFP and selecting an engineering firm, conducting two public forums, reviewing a preliminary design and cost estimate, as well as property impact and tree removal assessments. In October, the cost estimate increased by 50% due to the infrastructure improvements from Winslow Farm to Hurricane Road, costs for property rights and administrative fees, a fish passage at Hobbs Creek and other design details. He discussed the increase to the infrastructure costs: the road in that section needs to be widened for bicycle lanes, there was a layer of concrete pavement that was discovered under many layers of asphalt, and the road requires full reconstruction. They studied partial options, but it was determined that those were not feasible. This led to a cost estimate of \$15.4 million. Typically, since this is a state road, the DOT would be responsible for the majority of the costs and the DOT did increase its commitment from \$2.5 million to \$4.0 million, but the project is only feasible with a reduction of \$4 million. The committee therefore removed the Winslow Farm to Hurricane Road section from the scope of work. This leads to a construction cost of approximately \$11 million, and a total project cost of \$12.5 million after financing costs and other fees. The project would be funded with \$4 million from DOT; \$2 million from a portion of the projected TIF balance, and a \$6.5 million bond to be repaid with TIF income. The recommended scope of work includes fixing the safety of the Mountain/Falmouth Road and Leighton Road intersections, rebuilding Route 100 from Leighton Road to Libby Bridge, adding bicycle lanes from Portland town line to Libby Bridge, continuous sidewalks, improving street lighting and adding pedestrian lighting, adding public sewer, street trees, a median at TD Bank/Irving, and building a river access trail at Mill Road. He discussed the proposed upgrades to the Mountain/Falmouth Road and Leighton Road intersections. He discussed the proposed schedule: in the next couple months, they will finalize the funding plan, ask for an extension of the West Falmouth Crossing TIF, and seek Council approval of a referendum question. Since the project is more than \$1 million, the project must be approved by the voters; their goal is to go to referendum in June 2016. Assuming voter approval, the project would move forward with construction documents and final cost estimates, council review and approval and completion of right of way work by DOT in time for them to go to bidding late summer 2017, with construction commencing in fall 2017 and completing by fall 2018. They want to begin discussions with DOT in 2018 on how to design and fund the Winslow Farm to Hurricane Road section.

Chair Goldberg asked if there was a possibility of funding from the sewer department for the extension of the sewer lines.

Mr. Holtwijk said they anticipate have more conversations about the sewer expansion. If there were improvements that needed to be made down the line to accommodate the expansion, those are not included in this cost estimate.

Mr. Poore said the Council will have a presentation on the West Falmouth sewer expansion master plan later this spring. At that time they can review how that project ties in with this one, and how it will be funded. He discussed how sewer expansions have been financed in the past; typically they have relied on the wastewater enterprise fund to pay for sewer infrastructure.

Councilor Farber asked how much of this project is related to the sewer expansion; Mr. Holtwijk said it is \$1.3 million.

Councilor Farber asked when they would have to decide about whether the sewer is a part of the referendum question. Mr. Poore said that will be later in April.

Councilor Anderson asked how confident they were that future TIF revenues would be sufficient to pay the bonds.

Mr. Holtwijk said the analysis assumed a 1.2% valuation increase annually from 2017-2030. Historically, they have exceeded that many times over. They also anticipated a 3 cent tax increase over time. This estimate is based on existing valuation and not any new development. It is very conservative.

Councilor Anderson wondered if the pedestrian lighting was really necessary. He asked if this is really an area where people will want to walk at night, to the extent that it makes sense to spend this much money on lighting.

Steve Melchiskey said the amount in the cost estimate is a maximum number for the lighting. He thought the pedestrian lighting is more important here than on Route 1, since people live in this area. The input from the public was about how they could improve the area for children and increase community connection. He agreed it is a big number.

Councilor Farber asked how many residences are directly on Route 100 from the Portland line to the Libby Bridge. Mr. Melchiskey didn't know, but said there are many branches off Route 100. He thought there may be 150 or so.

Councilor Farber said this mix of residential and commercial distinguishes it from Route 1.

Councilor McBrady said sidewalks and lighting came up as important in the public forums. People can't walk safely along Route 100 at night.

Councilor King said this is a designated growth area; there may be a lot more living units in the area in 10 years.

Chair Goldberg argued that if they are installing bike lanes and encouraging bike traffic, it is important to light it.

Public comment was scheduled for February 8. An order to accept the preliminary plan would also be scheduled at that meeting.

Item 7 Update on the Mill Creek pump station replacement and force mains projects and an Order to authorize Revenue Bonds, backed by the system user fees, to finance the replacement of the Mill Creek Pump Station and installation of force sewer mains.

Chris Dwinal of Wright-Pierce summarized the need for improvements to the Mill Creek Pump Station, which dates back to 1969. It does not meet existing flow capacity needs. They have finalized the design and receive construction bids. The project will take approximately 17 months to construct. The engineer's estimate of construction cost is \$5.875 million for the entire project. He discussed the 6 bids the Town received for the pump station portion. The engineer is recommending the low bid by Apex Construction of \$2.8 million. They are wrapping up the design and easements for the force main project, and are expecting to go to bid in March 2016. This project will take less time to construct, and they anticipate construction to run concurrent with the pump station. He discussed the proposed funding: the Town is looking to bond the majority of the project, and are projecting a modest rate increase in 2017. This increase would cover the projects, as well as work that is anticipated as part of the West Falmouth Sewer Evaluation report recommendations. The last rate increase was in 2007.

Pete McHugh, Finance Director, said the sewer enterprise fund has a \$3 million undesignated fund balance; they are looking at using \$1 million of that towards the project. They checked comparable rates in the state and the Town is about average; the rate increase would not change that position.

Mr. Poore said they will further discuss rate increases as part of the budget process.

Councilor Kitchel asked why they hadn't reduced the total cost estimate to reflect the lower bid for the pump station.

Mr. Dwinal said there is more work to be done to the force main design and they don't know what the effect of that will be.

Mr. McHugh said the bond bank is aware that the number is high and could be reduced.

Mr. Poore said the Council's order is to authorize the \$5.9 million; they will have the opportunity to lower that amount.

Councilor Anderson asked when they do that; they are being asked to approve financing the full amount. He asked who makes the decision to lower it if there is fund balance that would reduce the financing, or the project comes in less.

Mr. Poore said it is a timing issue; they need this approval as part of the bond bank process. The bond bank meets on February 3 to discuss the Town's request to use revenue bonds instead of general obligation bonds. The bond order gives the Council the authority to use unassigned fund balance. Staff will not authorize spending until they come back to the Council with the final numbers.

Councilor Farber clarified that the fund balance they are referring to is part of the sewer enterprise fund, and not the Town's undesignated fund balance. She asked the difference between a revenue bond and a general obligation bond.

Mr. McHugh said a revenue bond is secured by usage fees; it wouldn't be guaranteed by the Town. A GO bond would bring the Town into it and possibly impact taxes. If the bond bank doesn't allow the revenue bond, they would have to go to referendum. The sewer rates would be enough to cover it in either case.

Chair Goldberg asked why the pump station requires 17 months to construct.

Mr. Dwinal said it is a difficult excavation; they need a lot of lead time to order the necessary pumps; and winter construction takes longer. The recommended contractor is anticipating a shorter construction time than 17 months.

Chair Goldberg asked if there would be any evening or night work; Mr. Dwinal said there is none planned. Any night work would be for special work they needed to do when flows are lower.

Councilor Hemphill asked how the relationship with Cumberland factors into this project.

Mr. McHugh said Falmouth is doing the financing and Cumberland will take 40% of the bond payments.

Public comment period opened; no public comment.

Councilor Farber moved the order; Councilor Hemphill seconded. Motion carried 7-0.

Item 8 Introduction of a proposed amendment to the Code of Ordinances, Section II-8-12-7, Restrictions on Single-Use Carryout Bags.

Councilor Farber introduced the proposed amendment. A specific retailer had asked for an amendment to the original ordinance in order to allow them to sell a bag that didn't meet the town's minimum required width for a plastic bag that was deemed reusable. This amendment would allow a retailer to charge an fee for single-use bags above the 5 cents. She didn't think the fee recommended by the ordinance committee took into account the cost of production of single-use bags. This amendment would make the 5 cent fee a "minimum" fee instead of a "uniform" fee.

Councilor Anderson said the fee was well researched by REAC. The major retailers told the committee that their cost for a paper bag was about 5 cents, and the cost for a plastic bag was about 1 cent. The goal of the ordinance wasn't for retailers to recoup their costs for the bags, but to protect the environment. The

ordinance as written is a financial windfall for these companies and he didn't see why they would want to increase that.

Councilor Farber thought the cost research that was done was before the thickness recommendation. She wondered why they were stopping at 5 cents; if the retailer wanted to charge more, it is a product. She felt the market would determine the cost. If production costs increased, this would allow flexibility.

Councilor Anderson pointed out that if the production costs increased, and the stores removed the bags from the stores, it would be a further benefit to the environment. A uniform fee is easier for the consumers to understand.

Councilor Kitchel pointed out that this is real money they are talking about for these large retailers. He didn't understand why they would allow them to take a greater margin on these bags.

Chair Goldberg agreed that market forces would not allow the stores to raise the prices too high.

Councilor King said this is a simple, straight-forward rule and they want to track it over a certain amount of time. It will be easier to see the impact if they leave it at 5 cents.

Councilor Hemphill saw the merit of Councilor Farber's suggestion.

Councilor McBrady agreed with Councilor King. He didn't see why a retailer would want to charge more, since the bags are free now.

Councilor Anderson felt since this is a Town ordinance, he felt the Town should retain power over the fee. They can adjust it later if necessary.

Councilor Farber withdrew her introduction; she agreed that the level of complexity would complicate tracking efforts, and she agreed with making it easier for consumers to understand.

Item 9 Discussion about future Council agendas.

Mr. Poore summarized the items scheduled for upcoming Council agendas.

Item 10 Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider the acquisition of real estate rights, pursuant to 1 M.R.S.A. § 405 (6) (C).

Councilor King moved the order; Councilor Anderson seconded. Motion carried 7-0.

The Council entered executive session at 9:33 pm and did not return.

Respectfully submitted,

Melissa Tyron
Recording Secretary